IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2006

Coram

The Hon'ble Mr.JUSTICE S.RAJESWARAN

W.P.No.40034 of 2006

M/s.Machine Tools & Accessories (P) Ltd.
Rep., by its Managing Director, Mr.K.Balaji
No.10/9, South Phase
Opp., 3rd Main Road
Ambattur Industrial Estate
Chennai-600 058 and
residing at No.2, L.V.Prasad Road
Dhanalakshmi Colony
Vadapalani, Chennai.600 026. .. Petitioner

vs.

1.The Recovery Officer
The Debts Recovery Tribunal-I
Spencer Towers
6th floor, No.770-A, Anna Salai
Chennai.600 002

2.State Bank of India
rep., by Branch Manager
Ambattur Industrial Estate Branch
Chennai.600 058

3.M/s.Saravana Foundations Ltd.
No.15, Giri Road, T.Nagar
Chennai.600 017

.. Respondents

Writ Petition filed under Article 226 of the constitution of India seeking to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in D.R.C.No.175/2004 leading to the issuance of the order dated 31.8.2006 issued by the 1st respondent in D.R.C.No.175/2004 and to quash the same and further to issue a direction directing the 1st respondent to consider, reply and act on the letter and query of the petitioner vide his letter dated 28.8.2006 to which the petitioner is entitled to.

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For Petitioner : Mr.K.S.Natarajan, for
M/s.K.Bhawatharini.

For Respondents : Mr.N.Kannadasan
Senior counsel, for
Mr.M.Suresh Kumar for R3.

Mr.K.S.Sundar for R2.

ORDER

By consent of the learned counsel appearing for all the parties the main writ petition itself is taken up for final hearing.

2.The brief facts as culled out from the affidavit are as follows:
The petitioner is a Small Scale Industry which closed down its business in the year 2001. The 2nd respondent bank issued a notice on 25.2.2003 demanding a sum of Rs.1,23,04,186.58 from the petitioner. On 10.5.2005 the petitioner was surprised to find an attachment order issued through the 1st respondent on behalf of the 2nd respondent pasted on the factory door. Thereafter on verification they came to know that all the notices were sent by DRT-II, Chennai to the company address and paper publication was effected and an exparte order was passed against them on 15.6.2004.

3.The 1st respondent issued auction notice and brought the property for sale by way of public auction held on 23.3.2006. The petitioner's Managing Director was also personally present on the day of auction. On 26.7.2006 the petitioner received an order dated 18.7.2006 informing that the 3rd respondent was the successful bidder and the sale certificate was issued to them on 30.6.2006. By the very same order dated 18.7.2006, the petitioner was asked to vacate the property within 7 days and by letter dated 26.7.2006, the petitioner sent a letter to the 1st respondent/Recovery Officer requesting time to locate a place and to re-locate the machinery. By letter dated 28.8.2006, the petitioner requested the 1st respondent to disclose the bid amount as the petitioner was entitled to the balance payment. On 31.8.2006 the 1st respondent sent a communication asking the petitioner to vacate, but no reply was given to the letter dated 28.8.2006. According to the petitioner, the disputed amount is Rs.1,23,04,186.58 and the auction took place for a sum of Rs.4.11 crores and therefore they are entitled to the balance sum, but the same has been retained by the 1st respondent. Now the petitioner apprehends that the property itself has been sold by the 1st respondent without following the rules and procedures. Therefore the petitioner has filed the above writ petition to quash the order dated 31.8.2006, issued by the 1st respondent to deliver vacant possession and to direct the 1st respondent to consider and reply the letter dated 28.8.2006.

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4.This court while admitting the writ petition on 19.10.2006 granted an order of interim injunction in M.P.No.1/2006 on the same day restraining the respondents from enforcing the order dated 31.8.2006 issued by the 1st respondent.

5.After service of notice, 3rd respondent filed M.P.No.2/2006 to vacate the interim injunction granted on 19.10.2006. In their counter affidavit filed in support of the vacate stay petition, the 3rd respondent submitted that they offered a price of about Rs.4.10 crores and 1st respondent was pleased to issue a receipt on 23.6.2006 and thereafter the sale certificate was issued on 30.6.2006. After paying the entire sale consideration they (3rd respondent) requested the 1st respondent to deliver vacant possession as the property was under the occupation of the writ petitioner. Pursuant to the request made by them, the 1st respondent passed an order dated 18.7.2006 directing the petitioner to hand over vacant possession. The petitioner by letter dated 26.7.2006, sought for 60 days time and the same was granted by the 1st respondent by order dated 1.8.2006 to enable the writ petitioner to remove the machineries. But the writ petitioner sent another letter to 1st respondent dated 28.8.2006 seeking details about the payments made by the bidder. Thus the petitioner is only dragging the proceedings and they are not willing to vacate the premises even though 60 days time sought for by them were granted by the 1st respondent. Hence 3rd respondent has filed the above M.P.No.2/2006 to vacate the order of injunction granted on 19.10.2006.

6.Heard the learned counsel for the petitioner, learned Senior counsel for the 3rd respondent (vacate stay petitioner) and the learned counsel for the 2nd respondent bank. I have also gone through the documents and the judgments filed and referred to by them in support of their submissions.

7.Learned counsel for the petitioner submitted that even though a request was made to 1st respondent by letter dated 28.8.2006 requesting him to furnish the details about the confirmation of sale in favour of the 3rd respondent, no reply has been sent by 1st respondent furnishing the details asked for. Without divulging the details, the 1st respondent has passed the order impugned directing the petitioner to deliver vacant possession. Therefore the learned counsel for the petitioner submitted that they have legitimate apprehension that the sale itself was made by the 1st respondent in favour of 3rd respondent without following the rules and procedures. Learned counsel further contended that until the entire details are furnished by the 1st respondent, the petitioner should not be asked to vacate the property.

8.Per contra, learned Senior counsel for the 3rd respondent has submitted that the writ petition itself is not maintainable as the

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writ petitioner can very well approach the DRT-II, Chennai to redress all their grievances. Learned Senior Counsel for 3rd respondent further submitted that 3rd respondent having paid a huge sum of Rs.4.11 crores should be permitted to take possession of the property. Learned Senior counsel further submitted that having granted 60 days time as granted by the 1st respondent, it is not for the writ petitioner to misuse the time granted and to file the above writ petition.

9.In support of his submission, learned Senior Counsel for 3rd respondent relied on a decision of this court reported in 2006(4) M.L.J. 33 (Times Guarantee Ltd. v. B.M., Industrial Devpt. Bank of India) and the decision of the Hon'ble Supreme court reported in 2006 (9) SCC 252 (C.Rajagopal v. R.Shankar Rao Jadhav).

10.Learned counsel for the 2nd respondent bank while adopting the arguments of the learned Senior Counsel for the 3rd respondent has submitted that the sale has been made in favour of the 3rd respondent in accordance with the rules and the writ petition is not maintainable when there is an effective and alternative remedy before the DRT-II, Chennai is available.

11.I have carefully considered the rival submissions with regard to facts and citations.

12.The order impugned in the above writ petition is an order of Recovery Officer dated 31.8.2006. In that order it was stated that 60 days time was granted to the writ petitioner for arranging finance to re-locate the machineries, but no steps were taken to vacate the land and building. Therefore the 1st respondent granted further period of 30 days time to deliver vacant possession, failing which the possession of the property would be placed in the hands of the auction purchasers at the risk and cost of the writ petitioner.

13.It is not in dispute that a debt recovery certificate No.175/2004 dated 15.12.2004 was issued by the DRT in O.A.No.152/2003 as the writ petitioner failed to pay a sum of Rs.1,47,85.100.14 to 2nd respondent bank. Therefore an order of attachment was passed by the 1st respondent on 10.5.2005 informing that the properties would be sold by public auction.

14.It is also admitted position that the property was sold in public auction on 23.3.2006 to 3rd respondent and the Managing Director of the writ petitioner was also personally present on the date of auction. The sale was confirmed and the sale certificate was also issued to 3rd respondent on 30.6.2006.

15.Pursuant to the confirmation of sale 1st respondent by order dated 18.7.2006 directed the writ petitioner under Rule 39 of the

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Income Tax (Certificate Proceedings) Rules, 1962 read with Sec.29 of the DRT Act to hand over vacant possession of the property within 7 days. The writ petitioner by letter dated 26.7.2006 requested the 1st respondent to grant 60 to 65 days time to locate a place and to re-locate the machineries. By order dated 1.8.2006 the first respondent granted time for 60 days from the date of issue of sale certificate i.e., up to 31.8.2006 to re-locate the machineries and to hand over vacant possession of the property.

16.Thereafter by letter dated 28.8.2006, the writ petitioner requested the 1st respondent under the Right to Information Act to provide them the details of payments made by the bidder and sought for further period of one month from the date of receipt of the amount due to them in one lot by way of Demand Draft in their favour. This was followed by another letter dated 29.8.2006 requesting the 1st respondent to grant them time till 31.10.2006 for arranging temporary finance facility of a few crores and other requirements explained in detail in their earlier letters.

17.Thereafter the impugned order has been passed by the 1st respondent granting 30 days time from 31.8.2006 to deliver vacant possession of the properties. From the above facts it is very clear neither the decree passed by the DRT in O.A.No.152/2003 nor the order of attachment passed by the 1st respondent dated 10.5.2005 nor the auction sale held on 23.3.2006 nor the sale certificate issued on 30.6.2006 nor the order dated 18.7.2006 issued by the 1st respondent under Rule 39 of the Income Tax Rules was challenged by the writ petitioner in a manner known to law. The writ petitioner's only grievance is that no proper reply was sent by the 1st respondent to their letter dated 28.8.2006 requesting 1st respondent to provide the details of payments made by the bidder under the Right to Information Act and until such time they should not be asked to vacate the property.

18.The 1st respondent passed an order under Rule 39 of the Income Tax (Certificate Proceedings) Rules 1962 read with Sec.29 of the DRT Act directing the writ petitioner to hand over vacant possession of the property within 7 days. But this order was not at all challenged by the writ petitioner. What was challenged before this court is the subsequent order dated 31.8.2006 granting further period of 30 days time to vacate the property. Therefore when the order dated 18.7.2006 is not challenged in the manner known to law, it is not for the writ petitioner to challenge the subsequent order dated 31.8.2006 that too before this court, which is only a consequential order sent in reply to the request seeking for explanation of time.

19.Learned counsel for the writ petitioner in the course of his arguments made an attempt to attack the sale certificate issued by the 1st respondent in favour of the 3rd respondent by referring to the

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various procedures mentioned in the II schedule of Income Tax Act, 1961 for recovery of tax. The learned counsel for the petitioner pointed out that clause 2, clause 11, clause 52, 53, 56, 57, 58 and 59 were not complied with by the 1st respondent before selling the property in favour of the 3rd respondent. He has also contended that the sale has been made in violation of the clauses 18, 19 of the Schedule I of the Indian Stamp Act, 1899. He further submitted that Sections 31 and 32 of the Stamp Act are not also followed before selling the property to 3rd respondent.

20.Learned Senior Counsel for the 3rd respondent replied that it is not for the writ petitioner to agitate all these issues before this court under Article 226 of the Constitution of India and the writ petition itself is not maintainable.

21.I find merits and force in the submissions of the learned Senior Counsel for the 3rd respondent.

22.First of all, the sale effected in favour of the 3rd respondent is not at all challenged before this court. Even otherwise if aggrieved by the order of the Recovery Officer, the remedy available to the writ petitioner is to file an appeal to the DRT-II.

23.I have already held that without challenging the order dated 18.7.2006 issued under Rule 39 of the Income Tax Rules read with Sec.29 of the DRT Act, a consequential order dated 31.8.2006 which is impugned in the writ petition cannot be challenged in this court.

24.Even for challenging the order dated 18.7.2006, an appeal remedy is provided under the DRT Act. In such circumstances, the writ petitioner cannot challenge the confirmation of sale before this court that too for the first time under Article 226 of the Constitution of India.

25.In 2006(9) SCC 252 (cited supra), the Hon'ble Supreme Court held that they failed to understand how the High Court could have exercised its jurisdiction under Articles 226 and 227 of the Constitution of India to set aside the final orders passed by the DRT and further held that the order passed by the High Court in exercise of writ jurisdiction is wholly unjustified.

26.In 2006(4) M.L.J. 33 (cited supra), this court held as under:

> "18. I am afraid whether a writ petition can be maintained by the petitioner with these factual averments to stall the auction conducted by the Recovery Officer, who is exercising his exclusive jurisdiction as decided by the Supreme Court. If any encroachment or misclaim is made by the

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auction purchaser, the remedy of the petitioner is elsewhere and not by way of writ petition.

19.It was argued by the counsel for the debtor-company that the auction purchaser has withdrawn most part of the amount deposited by him leaving a small fraction so as to keep the litigation alive. Per contra, it is submitted by the auction purchaser that the Industrial Development Bank of India has not shown any interest to get the stay order vacated. The petitioner got impleaded himself as a party in W.P.No.25635 of 2004 on 29.9.2004 and filed applications to vacate the interim orders granted in W.P.Nos.25635 and 27208 of 2004 and the vacate stay petition was not listed on 6.10.2004. As the matter has not been taken up for final orders, the auction purchaser has withdrawn portion of the amount by giving an unconditional undertaking to deposit the entire amount within seven days of the disposal of the writ petitions in his favour."

27.In 2001(6) SCC 569 (cited supra), the Hon'ble Supreme court held that DRT Act has been enacted with a view to provide special procedures for recovery of debts due to the Banks and Financial Institutions and there is a hierarchy of appeal provided in the Act. This fast-track procedure contemplated under the DRT Act cannot be allowed to be derailed by taking recourse to proceedings under Articles 226 and 227 of the Constitution of India.

28. I have also held in M.P.Nos.2,3 and 4 of 2006 in W.P.No.40073/2006 dated 19.12.2006 that the writ petition challenging the order of the DRT Act is not maintainable under Article 226 of the Constitution of India and the writ petitioner has got an effective alternative remedy under the DRT Act itself.

29. In the light of the above discussions and the judgments, it is not for the writ petitioner to challenge the confirmation of sale made by the 1st respondent in favour of the 3rd respondent.

30.Learned counsel for the petitioner finally submitted that even according to the 1st respondent as per order of attachment dated 10.5.2005 the writ petitioner failed to pay only a sum of Rs.1,47,85,100.14 and the auction sale fetched a sale confirmation of Rs.4.11 crores. In such circumstances the excess money belonging to the writ petitioner is illegally detained by the 1st respondent and there was no reply by the 1st respondent to their letter dated 28.8.2006 asking for details of the payment made by the bidder and the balance repayable to them. Till such details are furnished by the 1s

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respondent, the writ petitioner should be permitted to be in possession of the property.

31.I am not able to accept these submissions of the learned counsel for the writ petitioner. Non-furnishing of the details by the 1st respondent has nothing to do with the 3rd respondent taking possession of the property pursuant to an auction purchase that too after investing a huge sum of money. The writ petitioner cannot deny possession to the 2nd respondent on this score.

32.The writ petitioner has made out a case for getting information from the 1st respondent with regard to the entire details in connection with the sale made by the 1st respondent in favour of the 3rd respondent. Therefore I direct the 1st respondent to issue a proper reply to the letter of the petitioner dated 28.8.2006 insofar as seeking particulars of the details of payment made by the bidder and the balance repayable to them. Hence the 1st respondent is directed to give these particulars to the writ petitioner by following relevant rules and also in accordance with the law within 4 weeks from the date of receipt of this order. To that extent this writ petition is allowed and the writ petition fails insofar as the other prayer is concerned namely, to quash the order of the 1st respondent dated 31.8.2006. No costs. M.P.Nos.1 and 2 of 2006 are closed.

sks

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Recovery Officer
The Debts Recovery Tribunal-I
Spencer Towers
6th floor, No.770-A, Anna Salai
Chennai.600 002

2.The Branch Manager,
State Bank of India
Ambattur Industrial Estate Branch
Chennai.600 058

1 CC TO MRS. K. BHAVATHARINI, ADVOCATE SR 64304
1 CC TO MR.M. SURESH KUMAR, ADVOCATE SR 64307

Order,
W.P.No.40034/06

VC(CO), BP/22.12

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